



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/155668

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on March 13, 2014, at Kenosha, Wisconsin. The record was held open post-hearing for the Petitioner to submit additional information. On March 21, 2014, the Petitioner submitted additional documentation. On March 28, 2014, the agency submitted a response to the additional documentation submitted by the Petitioner. The record closed on March 28, 2014.

The issue for determination is whether the agency properly seeks to recover an overpayment of child care benefits in the amount of \$12,867.38 for the period of January 1, 2013 – December 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County. She and [REDACTED] were married at all times relevant herein.

2. On August 29, 2012, the Petitioner reported her husband [REDACTED] was no longer part of her household. The agency removed him from the Petitioner's case.
3. On October 12, 2012, the Petitioner submitted a renewal application to the agency. She reported an address on [REDACTED] in Kenosha. On October 12, 2012, [REDACTED] submitted an application for FS benefits. He reported an address on [REDACTED]. He reported no other household members.
4. On October 26, 2012, [REDACTED] contacted the agency to report that he previously reported his address incorrectly and that he lives with his brother at a [REDACTED] address in Kenosha.
5. On December 27, 2012, [REDACTED] started a new job and reported the Petitioner's address on [REDACTED] as his address. Petitioner's final paycheck at this employer dated April 30, 2013 was issued to him at the [REDACTED] address.
6. On January 15, 2013 and October 21, 2013 [REDACTED] submitted applications for FS benefits. He reported an address on [REDACTED] Kenosha. He reported no other household members.
7. On January 31, 2013, [REDACTED] contacted the agency to report that he lives with his brother.
8. On May 13, 2013, [REDACTED]'s address was updated in the Wisconsin Circuit Court Access Program (CCAP) in a child support/maintenance case. Two addresses are listed: the address on [REDACTED] and the address on [REDACTED] in Kenosha.
9. On June 6, 2013, an Order for Appearance and Petition for Child Support was served on [REDACTED] at the [REDACTED] address at 6:41 p.m. by a service agent.
10. On July 29, 2013, [REDACTED] started a new job and reported his address as the [REDACTED] address.
11. On August 30, 2013, the Petitioner submitted a Six Month Report Form (SMRF). She reported herself and three children in the household. She reported no address change. She reported her earned income. She reported that she is in a W-2 approved activity 35 hours/week. She also reported that she no longer needed child care for one of the children.
12. On September 24, 2013, [REDACTED]'s address was updated in CCAP to the [REDACTED] address in a civil garnishment matter.
13. On October 15, 2013, [REDACTED]'s employer sent him certified mail at the [REDACTED] address.
14. On December 9, 2013, the Petitioner submitted an online ACCESS application for child care. She reported her address on [REDACTED]. She reported herself and three children in the household. She reported [REDACTED] as the absent parent of two of the children.
15. On December 20, 2013, the agency added [REDACTED] to the Petitioner's case.
16. On December 26, 2013, [REDACTED]'s address was updated in CCAP to the [REDACTED] address in a traffic forfeiture matter.
17. The most recent address reported by [REDACTED] to the Wisconsin Department of Transportation is the address on [REDACTED].
18. On January 6, 2014, [REDACTED] contacted the agency to report that he does not reside with the Petitioner.
19. On February 13, 2014, the agency issued a Child Care Overpayment Notification to the Petitioner and [REDACTED] informing them that the agency is seeking to recover an overissuance of child care benefits in the amount of \$12,867.38 for the period of January 1 – December 31, 2013 due to the failure to accurately report household members.
20. On February 20, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

Liability for any overpayment extends to any parent whose family receives child care benefits during the period that he or she is an adult member of the same household. Liability is joint and several. Wis. Admin. Code § DCF 101.23(3)(a) and (b).

In this case, the agency alleges that [REDACTED] lived with the Petitioner during all of 2013 and that the Petitioner did not report [REDACTED]'s residence with her. The agency seeks to recover a total overpayment of all child care benefits issued to the Petitioner in 2013 based on her failure to report [REDACTED]'s residence. Its evidence includes [REDACTED]'s reports to his employers, the courts, the Department of Workforce Development (unemployment compensation benefits agency), and the Department of Transportation that he resided at the [REDACTED] address in 2013.

The Petitioner testified that [REDACTED] has not lived with her since 2012 but that he uses her address to receive mail. She testified that he resides with his brother on [REDACTED] and that he uses her address to receive mail because [REDACTED]'s brother often loses mail and/or the neighbors often take his mail. She testified that he comes to her house 2 – 3x/week because they have two children together. The Petitioner also had [REDACTED] and his brother testify at the hearing. Post-hearing, the Petitioner submitted statements from two landlords and a copy of a lease.

I conclude that the agency's evidence is sufficient to establish by a preponderance of the evidence that [REDACTED] was residing with the Petitioner in 2013. The Petitioner's evidence was not credible and therefore not sufficient to rebut the agency. Specifically, while the Petitioner testified that [REDACTED] used her address for important mailings because his brother loses mail and/or it is stolen by the neighbors, she submitted evidence that [REDACTED] also receives important mail at his brother's address. It is inconsistent to argue that [REDACTED] used her address for important documents because they were often lost or stolen if mailed to his brother's address but then submit evidence of important documents mailed to his brother's address to support the claim that he lives there.

The Petitioner's evidence with regard to landlord statements and the lease is also inconsistent. One landlord's statement indicated [REDACTED] moved from [REDACTED] in July, 2012. The other indicates that [REDACTED] moved in February, 2012. The lease also indicates he lived there with his brother and brother's girlfriend from February, 2012 – March, 2014. The lease is missing a number of pages and there is no signature page. I also note that [REDACTED] testified at the hearing that he had no lease with his brother. In addition, the agency requested statements from the landlords as part of its investigation but never received any response. The testimony at the hearing and the Petitioner's evidence is inconsistent about who [REDACTED] was living with, i.e. uncle, brother, brother's girlfriend, brother's child.

Though the agency has met its burden of demonstrating that [REDACTED] was residing with the Petitioner during the period of January 1, 2013 – December 31, 2013, there is insufficient evidence to demonstrate that the overpayment was properly calculated. There was some evidence that both Petitioner and [REDACTED] employed during some periods of 2013. The agency must determine the periods during which Petitioner and [REDACTED] engaged in approved activities during 2013 and the monthly household income for the those periods to determine if the household was eligible for child care benefits and, if so, how much it was entitled to. The overpayment will be the difference between what the household was eligible to receive and what it actually received.

I am, therefore, remanding this matter to the agency to obtain information about those periods in 2013 when [REDACTED] may have been participating in an approved activity. For those periods when he was not participating in an approved activity, the household was not eligible and a total overpayment may be taken. For those periods when he was in an approved activity, the agency must determine the household income and determine whether the household was eligible for benefits and the amount to which it was entitled. The overpayment for those periods will be the difference between the amount the household was eligible to receive and the actual amount that was issued. The agency must issue new notices based on its findings and there will be new appeal rights which will be limited to the issue of the amount of the overpayment. The issue of [REDACTED]'s residence will not be the subject of any new appeal as it is determined as part of the instant appeal.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner and [REDACTED] resided together during the period of January 1, 2013 – December 31, 2013. The agency must determine the amount of the overpayment by determining the periods during which the household may have been eligible for benefits based on Petitioner and [REDACTED]'s participation in approved activities and the amount of child care benefits to which the household was entitled during those periods. The overpayment will be the difference between the amount of child care benefits the household was eligible for and the actual issuance.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to obtain information about those periods in 2013 when Petitioner and [REDACTED] may have been participating in an approved activity. For those periods when one or both were not participating in an approved activity, the household was not eligible and a total overpayment may be taken. For those periods when both were in an approved activity, the agency must determine the household income and determine whether the household was eligible for benefits and the amount to which it was entitled. The overpayment for those periods will be the difference between the amount the household was eligible to receive and the actual amount that was issued. The agency must issue new notices based on its findings and there will be new appeal rights which will be limited to the issue of the amount of the overpayment. The issue of [REDACTED]'s residence will not be the subject of any new appeal as it is determined as part of the instant appeal. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

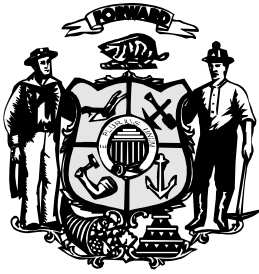
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of June, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 18, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud